IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

INTRALOX L.L.C.,	*	
	*	
Plaintiff,	*	
	*	
v.	*	1:19-CV-01653-ELR
	*	
SYSTEM SOLUTIONS OF KENTUCKY, LLC and LUMMUS CORPORATION,	*	
	*	
Defendants.	*	
	*	

ORDER

Presently before the Court are Defendant System Solutions of Kentucky, LLC's Motion to Compel Arbitration and Dismiss Claims [Doc. 24] and Defendant Lummus Corporation's Motion to Dismiss First Amended Complaint. [Doc. 25]. The Court's rulings are set forth below.

I. Background

This case arises out of a contractual dispute between Plaintiff Intralox, L.L.C. ("Intralox") and Defendants System Solutions of Kentucky, LLC ("SSK"), and Lummus Corporation ("Lummus"). Plaintiff produces and delivers conveyor systems and related equipment. Am. Compl. ¶ 8 [Doc. 21]. Defendant SSK designs, sources, and installs conveyor systems for the parcel, cargo, and baggage delivery

industries. Id. ¶ 9. Defendant Lummus is the sole member of Defendant SSK. Id. ¶ 2.

As alleged in the Amended Complaint, in March 2018, Defendant SSK contracted to purchase a conveyor system from Plaintiff for use at a facility operated by non-party United Parcel Service. Id. ¶ 7. The terms of the commercial relationship were governed by three (3) documents: (1) the Equipment Proposal, (2) the Master Purchase Agreement, and (3) the Purchase Order, which were entered into on various dates. Id. ¶¶ 10, 12, 15.

First, on March 12, 2018, Plaintiff provided Defendant SSK with an Equipment Proposal, which outlined the specific equipment being sold, the pricing of the equipment, the terms and timing of the payment, and provided that a Purchase Order was to be sent to Plaintiff no later than April 6, 2018. Id. ¶ 11. Shortly thereafter, on March 20, 2018, Plaintiff and Defendant SSK executed the Master Purchase Agreement, which set forth other terms including, most pertinently, an arbitration provision. Id. ¶ 12. As per the Equipment Proposal and Master Purchase Agreement, on May 24, 2018, Defendant SSK provided Plaintiff with the third document, the Purchase Order. Id. ¶ 15. The Purchase Order confirmed the equipment to be provided, the date of shipment, the purchase price, and the schedule for invoicing and payment. Id.

Plaintiff delivered and installed the system according to the terms of the agreements, completing shipment by September 24, 2018. Id. ¶ 19. However, Plaintiff alleges that during this period, Defendant SSK delayed and ultimately failed to pay contractually obligated invoiced amounts. Id. When confronted about delays in payment, Plaintiff asserts that Defendants SSK and Lummus made false representations about the cause of those delays and about SSK's ability to pay. Id. ¶ 35.

On April 11, 2019, Plaintiff filed this action seeking over $5 million in damages. In response, Defendant SSK filed its Motion to Compel Arbitration and Dismiss Claims [Doc. 19] and Defendant Lummus filed its Motion to Dismiss. [Doc. 18]. Subsequently, Plaintiff filed its First Amended Complaint on June 5, 2019.[1] [Doc. 21]. Defendants SSK and Lummus again filed the present Motion to Compel Arbitration and Dismiss Claims [Doc. 24] and Motion to Dismiss First Amended Complaint. [Doc. 25]. Having been fully briefed, these matters are now ripe for the Court's review.

[1] The filing of Plaintiff's Amended Complaint renders Defendants motions to dismiss as moot. See Gulf Coast Recycling, Inc. v. Johnson Controls, Inc., No. 8:07-CV-2143-T-30TBM, 2008 WL 434880, at *1 (M.D. Fla. Feb. 14, 2008) ("The filing of [an] amended complaint renders Defendants' earlier filed Motion to Dismiss moot."); Mizzaro v. Home Depot, Inc., No. 1:06-CV-11510, 2007 U.S. Dist. LEXIS 59781, 2007 WL 2254693, at *3 (N.D. Ga. July 18, 2007) (dismissing as moot a motion to dismiss the original complaint following the filing of an amended complaint).

II. Motion to Compel Arbitration

The Court turns first to Defendant SSK's Motion to Compel Arbitration and Dismiss Claims. [Doc. 24]. The Federal Arbitration Act ("FAA") governs the validity of an arbitration agreement. See 9 U.S.C. § 2. Pursuant to the FAA, arbitration clauses "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Id. The FAA provides that a party may challenge another party's failure to comply with an arbitration agreement by "petition[ing] any United States district court which, save for such agreement, would have jurisdiction . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4.

Any "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983). Nonetheless, the FAA's preferential policy towards arbitration only applies to disputes that the parties have agreed to arbitrate. Klay v. Pacificare Health Sys. Inc., 389 F.3d 1191, 1200 (11th Cir. 2004). Thus, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." AT&T Techs., Inc. v. Commc'n Workers of Am., 475 U.S. 643, 648 (1986). However, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H., 460 U.S. at 24.

When ruling on a motion to compel arbitration pursuant to the FAA, a district court engages in a two-step inquiry. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626-28 (1985). First, the court determines whether a valid agreement to arbitrate exists; second, the court decides whether the specific dispute falls within the substantive scope of that agreement. Id. If a court determines that both steps are satisfied, then "the FAA requires a court to either stay or dismiss the lawsuit and to compel arbitration." Lambert v. Austin Ind., 544 F.3d 1192, 1195 (11th Cir. 2008).

In this case, there is no dispute that a valid arbitration provision exists. Rather, the Parties dispute the second factor: the scope of the agreement. Thus, the key determination is whether the arbitration provision within the Master Purchase Agreement governs this action.

The relevant provision of the Master Purchase Agreement states:

> **16. Governing Law.** This Agreement shall be construed in accordance with the laws of the state of Georgia, without regard to its conflict of law principles. Each party submits to the jurisdiction of the federal and state courts located in Atlanta, Georgia, to hear and decide any dispute under this Agreement and hereby waives all objections or defenses of lack of personal jurisdiction or improper venue that otherwise might be available in any such action. *At Purchaser's sole option, any dispute arising out of or related to the performance, breach or interpretation of this Agreement shall be arbitrated under the Commercial Arbitration Rules of the American Arbitration Association.*

Master Purchase Agreement ¶ 16 [Doc. 35-1] (emphasis added). Pursuant to this language, Defendant SSK argues that the arbitration provision applies to the entirety

of Plaintiff's claims, and that the Court should order arbitration and dismiss this case. [See Doc. 24-2]. Plaintiff disagrees and offers three (3) arguments against arbitration and dismissal. [See Doc. 31]. The Court addresses each argument in turn.

A. Application of the Arbitration Provision to the Dispute

The Court begins with Plaintiff's first argument. Plaintiff claims that the three (3) documents in question — the Equipment Proposal, the Purchase Order, and the Master Purchase Agreement — govern separate components of the commercial relationship between it and Defendant SSK. [Id. at 2]. According to Plaintiff, transaction-specific terms (such as purchase price, payment, and invoice schedules) were governed by the Purchase Order and Equipment Proposal, while certain generic terms (like warranties and indemnities) were laid out in the Master Purchase agreement. [Id. at 3]. Because this action involves disputes about payments, a transaction-specific term, Plaintiff argues that this action does not fall within the scope of the Master Purchase Agreement, which governs generic terms. [Id. at 5-7]. Therefore, the arbitration provision does not apply. [Id.]

The Court disagrees. Contrary to Plaintiff's claim that the three (3) documents represent three (3) separate agreements, the Master Purchase Agreement expressly states otherwise.

> **19. Entire Agreement.** *This Agreement, each PO [Purchase Order], and each Proposal from Supplier* (excluding any standard terms and

> conditions form that may be attached to the proposal) *represent the entire agreement between the parties with respect to its subject matter*, and there are no other representations, understandings or agreements between the parties relative to such subject matter as this Agreement.

Master Purchase Agreement ¶ 19 (emphasis added). Additionally, Paragraph 1 of the Master Purchase Agreement provides: "In the event of a conflict between this Agreement and any terms and conditions attached to or referenced in the PO [Purchase Order], this Agreement shall control." Id. ¶ 1. Thus, under the plain language of the Master Purchase Agreement, the three (3) documents must be read together as one binding agreement, with the Master Purchase Agreement serving as the controlling document. See Harris v. Baker, 652 S.E.2d 867, 868 (Ga. Ct. App. 2007) ("[T]wo or more documents can together create a single contract if one of them is referenced by or incorporated into the other.") (internal citations omitted); Lovell v. Thomas, 632 S.E.2d 456, 460 (Ga. Ct. App. 2006) ("[A] contract must be interpreted to give the greatest effect possible to all provisions rather than to leave any part of the contract unreasonable or having no effect.") (internal citations omitted).

Further, the Eleventh Circuit has held that "if a Plaintiff relies on the terms of a written agreement in asserting the party's claims, that party is equitably estopped from then seeking to avoid an arbitration clause within the agreement." Becker v. Davis, 491 F.3d 1292, 1300 (11th Cir. 2007). Here, while Plaintiff attempts to avoid application of the arbitration clause, it uses that same provision in the Master

Purchase Agreement to establish personal jurisdiction and venue in this district.[2] See Am. Compl. ¶¶ 5-6 ("SSK consented to personal jurisdiction in this forum in the Master Purchase of Goods Agreement . . . . SSK further agreed that venue would be proper in this Court in the Master Purchase Agreement.") (citing Master Purchase Agreement ¶ 16). Because Plaintiff has relied on the Master Purchase Agreement in asserting its claims, it is bound by the arbitration clause contained in that document.

In sum, the Court finds that language of the arbitration provision to be broad. The provision states that "*any dispute arising out of or related to* the performance, breach or interpretation of this Agreement shall be arbitrated under the Commercial Arbitration Rules of the American Arbitration Association." Master Purchase Agreement ¶ 16 (emphasis added). Nothing in the provision's language suggests it is limited solely to disputes arising only out of the Master Purchase Agreement and not the Equipment Proposal or the Purchase Order. Id. Further, as stated in Paragraph 19, "this Agreement" includes subject matters covered by other documents including the Purchase Order and Equipment Order. Id. ¶ 19.

Therefore, despite Plaintiff's argument to the contrary, the arbitration clause covers payment disputes. See Bd. Of Trs. v. Citigroup Glob. Mkts., Inc., 622 F.3d

[2] The Court notes that Plaintiff also relies on the Master Purchase Agreement to establish that Defendant agreed to "pay all valid and undisputed invoices[,]" to pay interest "on late payments at the applicable legal rate[,]" and to be "responsible for any collection costs in accordance with the maximum rate allowed in the applicable jurisdiction." Am. Compl. ¶ 12 (citing Master Purchase Agreement).

1335, 1343 (11th Cir. 2010) ("There also is nothing unusual about an arbitration clause . . . that requires arbitration of all disputes between the parties to the agreement. We have enforced such a clause before because it evinced a clear intent to cover more than just those matters set forth in the contract.") (internal citations omitted). Accordingly, the Court finds that the Master Purchase Agreement's arbitration provision applies to Plaintiff's claims in this case.

B. Nonsignatory Enforcement and Equitable Estoppel

Plaintiff next argues that the Master Purchase Agreement "empowers a different entity — System Solutions of Kentucky, ***Inc.*** — not SSK, with the authority to elect arbitration." [Doc. 31 at 2] (emphasis in original). According to Plaintiff, because Defendant SSK is a nonsignatory to the agreement, it cannot enforce the arbitration provision. [Id. at 8-10] (citing Lawson v. Life of the South Ins. Co., 648 F.3d 1166 (11th Cir. 2011) (holding that a third-party beneficiary nonsignatory did not have standing to compel arbitration)).

In reply, Defendant SSK asserts that the "naming of 'Systems Solutions of Kentucky, Inc.' rather than 'System Solutions of Kentucky, LLC' in the Master Purchase Agreement was a scrivener's error."[3] [Doc. 35 at 10]. According to Defendant SSK, a search through the corporate records of Kentucky would reveal

[3] A scrivener's error is a clerical error, which is "[a]n error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination." BLACK'S LAW DICTIONARY (11th ed. 2019).

that "System Solutions of Kentucky, Inc. does not exist." [Id.] Consequently, Defendant SSK requests that this Court take judicial notice of that fact.[4] [Id.]

Here, the Court declines to take judicial notice because Plaintiff is equitably estopped from denying that Defendant SSK may compel arbitration under the Master Purchase Agreement. Equitable estoppel is a doctrine that "precludes a party from claiming the benefits of some of the provisions of a contract while simultaneously attempting to avoid the burdens that some other provisions of the contract impose." Bailey v. ERG Enters., LP, 705 F.3d 1311, 1320 (11th Cir. 2013) (internal citations omitted). Thus, "[w]here a signatory's claims against a nonsignatory depend on a contract containing an arbitration clause, the signatory must arbitrate with the nonsignatory." Blinco v. Green Tree Servicing LLC, 400 F.3d 1308, 1312 (11th Cir. 2005). As aptly stated by the Eleventh Circuit in Bailey:

> Equitable estoppel allows a nonsignatory to enforce the provisions of a contract against a signatory in two circumstances: (1) when the signatory to the contract relies on the terms of the contract to assert his or her claims against the nonsignatory and (2) when the signatory raises allegations of interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.

705 F.3d at 1320 (internal citations omitted).

Here, the Court finds that the first circumstance applies. As stated *supra*, the Court has already set forth the various ways in which Plaintiff relies on the Master

[4] Federal Rule of Evidence 201(b)(2) permits the court to take judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

Purchase Agreement to establish its claims. Therefore, Plaintiff is equitably estopped from denying that Defendant SSK can compel arbitration.

C. Stay Rather than Dismiss

Finally, Plaintiff's third argument is that if the Court determines arbitration is appropriate, then the Court should stay rather than dismiss the case. Upon review, the Court agrees. Pursuant to Section 3 of the FAA, upon granting a motion to compel arbitration, the Court shall "stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3; see also Klay, 389 F.3d at 1203 (stating that for arbitrable issues, 9 U.S.C. § 3 "indicates that the stay is mandatory"). Accordingly, the Court will stay and administratively close this case while the Parties are engaged in arbitration proceedings.

Further, because this Court has determined that arbitration is appropriate, the Court does not reach Defendant Lummus' Motion to Dismiss First Amended Complaint. [Doc. 25]. The Court finds that it is proper for the arbitrator to decide the merits of Defendant Lummus' motion to dismiss.

III. Conclusion

For the foregoing reasons, the Court **DENIES AS MOOT** System Solutions of Kentucky, LLC's Motion to Compel Arbitration and Dismiss Claims [Doc. 18] and Defendant Lummus Corporation's Motion to Dismiss Plaintiff's Complaint. [Doc. 19]. Further, the Court **GRANTS IN PART AND DENIES IN PART**

Defendant System Solutions of Kentucky, LLC's Motion to Compel Arbitration and Dismiss Claims. [Doc. 24]. Specifically, the Court grants Defendant's motion to compel arbitration, but denies Defendant's motion to dismiss claims.

The Court **DIRECTS** Defendants to initiate any arbitration proceedings within sixty (60) days from the date of entry of this order. If Defendants do not initiate arbitration within sixty (60) days from the date of entry of this order, Plaintiff may move to reopen the case.

Finally, the Court **DIRECTS** the Clerk to **ADMINISTRATIVELY CLOSE** this case while the Parties are engaged in arbitration proceedings. Either Party may move to reopen the case once arbitration is complete. Should the Parties resolve this case at arbitration, the Court **DIRECTS** the Parties to file on the docket a stipulation of dismissal within thirty (30) days from the close of arbitration proceedings.

SO ORDERED, this 25th day of November, 2019.

Eleanor L. Ross
Eleanor L. Ross
United States District Judge
Northern District of Georgia